

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: OHIO EXECUTION  
PROTOCOL LITIGATION**

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**Case No. 2:11-cv-1016**

**Chief Judge Edmund A. Sargus, Jr.**

**This document relates to:  
All Plaintiffs**

**Magistrate Judge Michael R. Merz**

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**DEFENDANTS' MOTION FOR LEAVE TO AMEND  
ANSWERS TO INDIVIDUAL COMPLAINTS**

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Pursuant to Rule 15(a)(2), Defendants Anonymous Execution Team Members #1-50, Charles Bradley, John Coleman, Ronald Erdos, Stephen Gray, John Kasich, Christopher LaRose, Gary Mohr, Donald Morgan, Timothy Shoop, Richard Theodore, and Edwin Voorhies (herein after "Defendants"), hereby move for leave to amend their Answers to the Individual Supplemental Complaints of the following Plaintiffs: Tyrone Ballew; Quisi Bryan; Douglas Coley; Jeronique Cunningham; Roland Davis; Von Clark Davis; Archie Dixon; John Drummond; Phillip Elmore; Gregory Esparza; Larry Gapen; Delano Hale; James Hanna; Warren Henness; Danny Hill; Genesis Hill; Percy Hutton; Kareem Jackson; Donald Ketterer; Edward Lang; James Mammone; Jonathan Monroe; Kevin Scudder; Bobby Sheppard; George Skatzes; David Sneed; Warren Spivey; John Stumpf; Raymond Twyford; Robert Van Hook; Warren Waddy; Hersie Wesson; Andre Williams; and Robert Williams.

In accordance with Rule 15(a)(2) and Local Rule 7.3(b), undersigned counsel contacted Plaintiffs' counsel, who consented to this filing. For the reasons stated below, Defendants request that this Court grant them leave to amend.

On May 9, 2018, the Defendants filed answers to 81 individual complaints, and on June 18, 2018, Defendants filed answers to 5 additional individual complaints. In their complaints, the Plaintiffs set forth various medical conditions, religious concerns, and proposed numerous alternative methods of execution. Each individual complaint was between approximately 115 and 200 pages in length. The Defendants worked diligently to ensure that they thoroughly reviewed and considered every allegation of all 86 individual complaints in drafting their answers to each. After filing all of those answers, and upon further review and deliberation, Defendants determined that some portions of their answers to specific allegations were not completely accurate. Specifically, Defendants determined that three of the drugs, which were identified by several Plaintiffs as part of a four-drug proposed alternative method of execution, are available for purchase by the Defendants or already in the Defendants' possession, and that the Defendants possess, have within their control, or could obtain with ordinary transactional effort, the medical supplies necessary for the oral administration of drugs.

Therefore, Defendants request leave to amend each of their Answers to each of the Individual Complaints of the aforementioned Plaintiffs to read as follows:

### **Execution by Oral Administration of Midazolam, Digoxin, Morphine Sulfate, and Propranolol**

As to all allegations regarding this alternative, Defendants admit that they possess, or have within their control, or could obtain with ordinary transactional effort, a wedge-shaped cushion. Defendants admit that they possess, or have within their control, or could obtain with ordinary transactional effort, midazolam, digoxin, morphine sulfate, and propranolol. Defendants aver that they possess or have within their control, or could obtain with ordinary transactional effort, the medical supplies necessary to administer these drugs orally rather than through peripheral IV access. Defendants otherwise deny.

This amendment would apply to the Defendants' Answer for each Plaintiff's individual complaint as follows:

<b>Plaintiff</b>	<b>Defendants' Answer ECF No.</b>	<b>PageID</b>
Ballew, Tyrone	1517	69659
Bryan, Quisi	1634	69833
Coley, Douglas	1639	69978
Cunningham, Jeronique	1802	73429
Davis, Roland	1641	70037
Davis, Von Clark	1642	70070
Dixon, Archie	1803	73459
Drummond, John	1643	70101
Elmore, Phillip	1645	70162
Esparza, Gregory	1646	70192-193
Gapen, Larry	1652	70370-371
Hale, Delano	1653	70403
Hanna, James	1655	70464
Hennes, Warren	1657	70524
Hill, Danny	1658	70556
Hill, Genesis	1513	70588-589

Hutton, Percy	1663	70707
Jackson, Kareem	1665	70766
Ketterer, Donald	1524	70795
Lang, Edward	1804	73489-490
Mammone, James	1675	71051-052
Monroe, Jonathan	1678	71144-145
Scudder, Kevin	1687	71413
Sheppard, Bobby	1688	71445
Skatzes, George	1690	71504-505
Sneed, David	1692	71568-569
Spivey, Warren	1694	71630-631
Stumpf, John	1695	71663
Twyford, Raymond	1699	71781-782
Van Hook, Robert	1700	71813
Waddy, Warren	1701	71844-845
Wesson, Hersie	1704	71932-933
Williams, Andre	1705	71963-964
Williams, Robert	1707	72024

This amendment will not cause undue delay, will not cause undue prejudice to any of affected Plaintiffs, and is not the result of bad faith or a dilatory motive by the Defendants. The requested amendment is not futile and the Defendants have not demonstrated a repeated failure to cure deficiencies in previous amendments. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (identifying factors for denying an amendment). The Defendants have promptly made this motion after review and confirming the availability of the drugs and supplies in the alleged proposed alternative method. The Plaintiffs will not suffer prejudice by this proposed amendment to Defendants’

Answers since the availability of drugs, alone, does not satisfy the second prong of *Glossip* because it is not an available, “feasible, readily implemented alternative, and in fact significantly reduce[s] a substantial risk of severe pain.” *Glossip v. Gross*, 135 S. Ct. 2726, 2737 (2015), quoting *Baze v. Rees*, 553 U.S. 35, 52 (2008) (plurality opinion).

Respectfully submitted,

**MICHAEL DEWINE**  
Ohio Attorney General

*s/ Charles L. Wille*

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**CHARLES L. WILLE (0056444)\***

*\*Co-Trial Attorney*

*s/ Zoe A. Saadey*

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**ZOE A. SAADEY (0089181)\***

*\*Co-Trial Attorney*

**THOMAS E. MADDEN (0077069)**

Assistant Attorneys General

Criminal Justice Section, Capital Crimes Unit

150 East Gay Street, 16th Floor

Columbus, Ohio 43215

T: (614) 728-7055; F: (614) 728-9327

Charles.Wille@ohioattorneygeneral.gov

Zoe.Saadey@ohioattorneygeneral.gov

Thomas.Madden@ohioattorneygeneral.gov

**COUNSEL FOR DEFENDANTS**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of *Defendants' Motion for Leave to Amend Answers to Individual Complaints* was filed electronically this 3<sup>rd</sup> day of July, 2018. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Charles L. Wille

**CHARLES L. WILLE (0056444)**

Assistant Attorney General